

United States
Circuit Court of Appeals
For the Ninth Circuit.

SHELL COMPANY OF CALIFORNIA, a Corporation,
Appellant,

vs.

PACIFIC STEAMSHIP COMPANY, a Corporation of
Portland, Maine, Claimant and Owner of the Steam-
ship "ADMIRAL GOODRICH," Her Tackle, Ap-
parel and Furniture,

Appellee.

Supplemental Apostles on Appeal.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

FILED

APR 18 1922

F. D. MONCKTON,
CLERK

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SHELL COMPANY OF CALIFORNIA, a Corporation,
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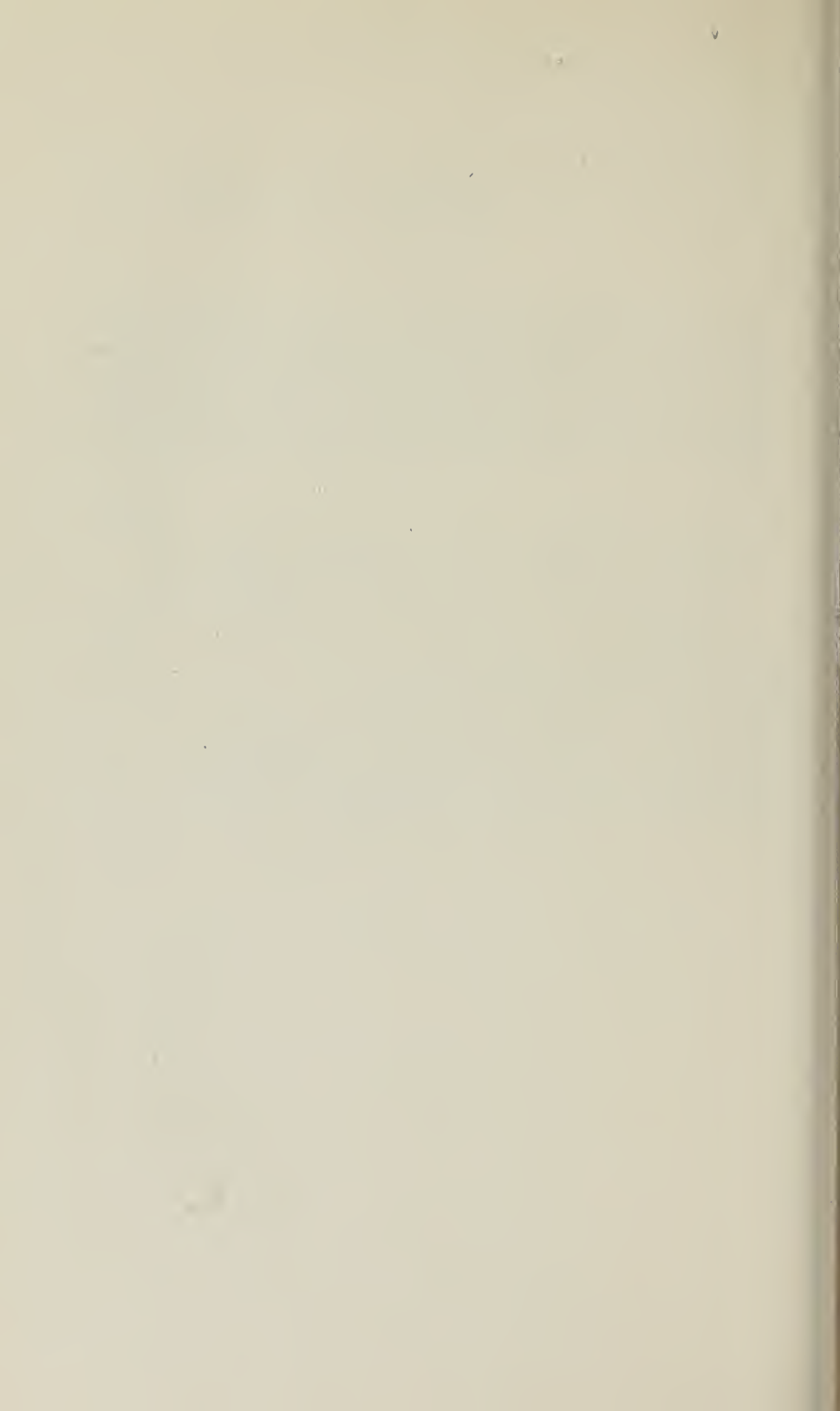
Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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[1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Cor-
poration,

Libelant,

vs.

Steamship “ADMIRAL GOODRICH,” Her
Tackle, Apparel and Furniture,

Respondent;

PACIFIC STEAMSHIP COMPANY, a Corpora-
tion,

Claimant.

Memorandum of Authorities.

The Act of June 23, 1910, relating to liens on ves-
sels for repairs, supplies or other necessities.

36 Stat. 604—United States Compiled Stat-
utes, Sections 7783 to 7787.

The South Coast, 251 U. S. 519.

“How far may one furnishing services to a vessel,
without any actual knowledge of her ownership,
agents or charterings, and dealing with some per-
son other than the Master shut his eyes, avoid or
neglect all inquiry, and rest upon an authority to
contract, which is in essence nothing more than an
inference from an apparent act of authority?”

The Hatteras, 255 Fed. 518.

The Court further said that the tug owner made no [2] inquiry, literally knew nothing and sought to know nothing about the relationship of the hirer to the barges. That such circumstances amount to shutting ones eyes to keep out the light and successfully rebut any presumption of lien.

In the case of *Curacao Trading Company vs. Bjorge*, 263 Fed. 693, writ of certiorari denied, 253 U. S. 492, it was held that the lien statute does not create a presumption, that a charterer, unless he is also either the ship's husband, master or person to whom the management of the vessel at the port of supply is entrusted, has authority from the owner to procure repairs, supplies or other necessities for the vessel. That no lien on a vessel is given for supplies procured by one having no such relations to it, that under the terms of the statute he (the charterer) is presumed to have authority from the owner to procure supplies.

"Furthermore, circumstances either known to the appellant (furnisher) or which it easily could have ascertained, made it apparent that it was not to be expected that the owner, or the master for it, would be concerned about the vessel being supplied with the coal required to enable it to proceed on its voyage."

In the case last cited it was decided that the *South Coast (supra)* was not authority for the proposition that a vessel may be subjected to a lien for the price or value of supplies furnished to a charterer who is without authority to bind the vessel or its owner thereof.

It must be clearly understood in the case at bar that the master had nothing to do with the ordering of these supplies. [3]

Assuming, but not admitting, that the charterer was one of the persons named in the statute as having presumptive authority from the owner to procure supplies, the charter-party in this case, which is a time charter and not a demise, by its terms prohibits the charterer from creating liens upon the vessel. (See Clause 5 of charter-party, Exhibit "A" of Libel.)

In *The Oceana*, 244 Fed. 80, an agreement for the sale of a vessel which contained a provision that the purchaser should keep the ship clear of any liens from any cause and if any lien or libel was filed or asserted, the same to be immediately bonded by the purchaser, was held not to be authority to create liens.

Respectfully submitted,

GROSSCUP & MORROW,

W. A. JOHNSON,

Proctors for Claimant.

414 L. C. Smith Bldg., Seattle, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 18, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [4]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-
ration,

Libelant,

vs.

Steamship “ADMIRAL GOODRICH,” Her
Tackle, Apparel and Furniture,
Respondent.

Stipulation Re Record on Appeal.

IT IS STIPULATED by the parties to the above-
entitled cause, through their respective proctors,
that the record on appeal in this case shall include
all depositions taken in this cause, as well as all
exhibits attached to said depositions, also all copies
of exhibits, the originals of which were introduced
in open court and, in addition, the memorandum of
authorities filed in open court on January 13, 1922,
by the proctors for the respondent and claimant.

WILMON TUCKER,
IVAN L. HYLAND,
FORD Q. ELVIDGE,
Proctors for Libelant.

B. S. GROSSCUP,
W. C. MORROW,
W. A. JOHNSON,
Proctors for Respondent and Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. April 8, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [5]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corporation,

Libellant,

vs.

Steamship "ADMIRAL GOODRICH," Her Tackle, Apparel and Furniture,

Respondent.

Order Re Contents of Record on Appeal.

Upon the stipulation of the parties hereto, through their respective proctors,

IT IS ORDERED that the record on appeal in the above-entitled cause shall include all depositions taken in this cause, as well as all exhibits attached to said depositions, also all copies of exhibits, the originals of which were introduced in open court and, in addition, the memorandum of authorities filed in open court on January 13, 1922, by the proctors for the respondent and claimant.

Done in open court this 8th day of April, 1922.

JEREMIAH NETERER,

District Judge.

Approved:

WILMON L. TUCKER,
IVAN L. HYLAND,
FORD Q. ELVIDGE,
Proctors for Libellant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 8, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [6]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN ADMIRALTY—No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-
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Libellant,

vs.

Steamship “ADMIRAL GOODRICH,” Her
Tackle, Apparel and Furniture,

Respondent;

PACIFIC STEAMSHIP COMPANY, a Corpora-
tion,

Claimant.

Praeipie for Transcript of Record on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare and certify to the United States
Circuit Court of Appeals for the Ninth Circuit, sit-

ting at San Francisco, California, an additional record on appeal, setting forth the following documents and pleadings:

1. Respondent's and claimant's memorandum of authorities filed in open court January 13, 1922.

2. Stipulation that the record on appeal shall include all depositions, all exhibits attached to said depositions, all copies of exhibits, the originals of which were introduced in open court, and the memorandum of authorities filed in open court on January 13, 1922, by the respondent and claimant.

3. Order including in the record depositions, exhibits and memorandum of authorities.

4. This praecipe.

B. S. GROSSCUP,
W. C. MORROW,
W. A. JOHNSON.

Proctors for Respondent and Claimant.

Copy received April 6, 1922.

WILMON L. TUCKER,
IVAN L. HYLAND,
FORD Q. ELVIDGE,
Proctors for Libelant. [7]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 8, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [8]

United States District Court, Western District of
Washington, Northern Division.

No. 5530.

SHELL COMPANY OF CALIFORNIA, a Corpo-
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Libelant,

vs.

Steamship “ADMIRAL GOODRICH,” Her
Tackle, Apparel and Furniture,
Respondent.

**Certificate of Clerk U. S. District Court to Supple-
mental Transcript of Record on Appeal.**

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this printed transcript of record, consisting of pages numbered from 1 to 8, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the supplemental record on appeal herein, from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges, incurred and paid in my office on behalf of the appellee for making supplemental record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [9]

Clerk's Fees (Sec. 828, R. S. U. S.)

for making record, certificate or re-

turn, 16 folios at 15¢ \$2.40

Certificate of Clerk to transcript or

record, 4 folios at 15¢60

Seal to said certificate20

I hereby certify that the above cost for preparing and certifying record, amounting to \$3.20, has been paid to me by attorneys for appellee.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 8th day of April, A. D. 1922.

[Seal]

F. M. HARSHBERGER,

Clerk United States District Court, Western District of Washington. [10]

[Endorsed]: No. 3838. United States Circuit Court of Appeals for the Ninth Circuit. Shell Company of California, a Corporation, Appellant, vs. Pacific Steamship Company, a Corporation of Portland, Maine, Claimant and Owner of the Steamship "Admiral Goodrich," Her Tackle, Apparel

and Furniture, Appellee. Supplemental Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed April 11, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

